O/Railways

1953. **File No.** 3/53

P.S.V

Legal Department
G. BRANCH

Subject:— Opinions on the Indian Railways Act

O/Railways/53

File No. 3/53

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C O N T E N T S

Legal Department File No. G/Railways/53(G.3)

Sr. No.	R. I. / O. No.	Subject	Pages.
		Opinions under the Indian Railways Act, 1890.	
1.	G-9/5-1-53	Whether the Railway can refuse the claim for loss of bales of cloth during transit by merely attributing it to a running train theft or can refute an calim arising from loss due if to theft in running train. 2) Whether in view of the fact that the D.M. is the nominal consignee, the cost of the bales should be borne by the Govt. or by the Distt. Wholesdealer.	1-4
2.	G-541/9-9-53	Whether the Railways are legally justified in repudiating the claims of Govt. under Sec. 72 of the Act in respect of loss of goods either due to running train theft or thefts in the Railway yards.	5-6

Mjr/16/8/
5 Cs.

29/1/54

The following two questions are referred to the R.L.A. his opinion -

(1) Whether the railway can refuse the claim for loss of 2 bales of cloth during transit by merely attributing it to a running train theft or can refute a claim arising from loss due to theft in a running train.

(2) Whether in view of the fact that the District Magistrate is the nominal consignee, the cost of these 2 bales shou be borne by the Government or by the District Wholesaler

As regards the first question, it appears that the goods were booked at railway's risk and not at the owner's risk. But even when the goods are booked at railway's risk section 72 of the Indian Railways Act provides that the responsibility of the railway administration for the loss, destruction and deterioratio of goods delivered to the administration to be carried by railway shall be that of a bailee under section 151, 152 and 161 of the Indian Contract Act. As a bailee the railway administration was bound to take as much care of the goods bailed as a person of ordinary prudence would under similar circumstances taken of his own goods. Section 152 of the Indian Contract Act provides that the bailee in the absence of any special contract is not responsible for the loss, destruction or deterioration of the goods bailed if he has taken the amount of care as is described above. Section 161 of the Indian Contract Act provides that if by the default of the bailee the goods are not returned, delivered or tendered at the proper time, the bailee is responsible to the bailor for any loss, destruction or deterioration of the goods from that time. In this case the loss has been attributed to running train theft and therefore the bailee would not be responsible, if it could show that it had taken reasonable and proper care of the goods bailed to it. In his letter the Superintendent of Claims has stated that the loss can only be attributed to a running train theft which is beyond the control of the railway administration and that the railway administration has taken every possible care as that of a bailee and therefore while sympathising with the Nagar District Urban Central Co-operative

Bank Limited for the loss of the bales it was regretted that the claim for compensation could not be entertained. In view of this it seems difficult to press the claim against the railway. At the most the railway can be asked to state whether on noticing that the bales were pilfered any intimation had been given to the police authorities and whether any attempt has been made to trace the bales. If they had taken that much care then it does not appear that the claim can be pressed against them.

As regards the second question the State Textile Controller's office is informed that as the bales were despatched under the Departmental Trading Scheme and as under that Scheme the District Wholesaler's responsibility started only after the bales were delivered to him ex-railway station, the cost of the two bales lost in trapsit on Railway will have to be borne by Government.

Sd/P.M.LAD.
5/1

Remembrancer of Legal Affairs.

U.R. to S.T.C. No. G- 9, dated the 5th January 1953.

VGP. 14-8-56.

It seems the various Railway Administration are repudiating the claims of Government in respect of loss of goods either due to running train thefts or thefts in the Railway Yards. The question for R.L.A.'s consideration is whether the Railways are legally justified in doing so under section 72 of the Indian Railways Act 1890.

Attention is requested to question No. (1) considered in R.L.A.'s opinion No. C-9, dated the 5th January 1952 wherein the said question was considered in respect of running train thefts. Section 72(1) of the Indian Railways Act provides that the responsibility of the Railway Administration for the loss, destruction and deterioration of goods delivered to it for being carried by railway shall, subject to the other provisions of that Act, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act. Sub-section (2) of section 72 provides that an agreement purporting to limit that responsibility shall in so far as it purports to effect such limitation be void unless it -

(a) is in writing signed by or on behalf of the person delivering the goods to the Railway administration and

(b) is otherwise in a form approved by Government.

In this case it is not clear under what risk note the goods are generally transported by or on behalf of Government. It is not also clear from the papers whether the consignments on behalf of Government are sent under any risk note expecially risk note Z. It is however informally ascertained from the Food Controller's Office that the Railway has now abolished all risk notes in respect of foodgrains and the consignments are accepted only at 'Railway risk'. The responsibility of the Railway for the goods stolen while in their possession would therefore be entirely of a bailee. In all these cases the Railway administration has said that police enquiries were made but the culprits could not be apprehended and there is no

evidence to show that the Railway servants are implicated in the matter. The Railway administration is responsible as a 'bailee' and not as an insurer. They have to take as much care of the goods as a person in similar circumstances would take of his own goods and the loss or damage of goods entrusted to the Railway as a bailee is prima facie evidence of negligence and the burden of disproving negligence lies on the Railway.
(See Mullas Contract Act, p. 495).

Sd/
Secretary to Government.

U.R. to C.S.D. No. G.541, dated the 9th September 1953.

VTP. 14-8-56.